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# **CHILDREN AND THE LAW**

edited by

Bernard Green

April 1988

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## CHAPTER ONE: INTRODUCTION

### A. General

In ordinary usage, "children" can refer to two different groups: one group characterized by age, the other by a legal relationship between the child and another person, his or her parent.

Our society has determined that a person does not have complete legal rights until he or she has reached a certain age. In this province, by the Age of Majority and Accountability Act, R.S.O. 1980, c. 7, a person is vested with full legal capacity at age 18. The eighteen-year-old can vote, marry without parental consent, enter into contracts, etc. But he or she cannot obtain a drink legally in any bar in Ontario until the following year.

Fixing the age for majority at 18 does not answer many questions: (1) At what age shall we allow young people to drive? To leave school? At what age should a person be fully responsible before the criminal law? (2) Does whatever answer you or society gives answer the question, at what age a person should be allowed to obtain an abortion?

Your answer to the last question may be affected by the second meaning that "children" has, i.e., a legal relationship between the "child" and another person, his or her parent. In our society, the legal relationship is normally a product of biology: a parent-child relationship is created as a result of a man and a woman entering into a relationship which produced a child. The usual non-biological method of creating the parent-child relationship is by adoption.

The issues we explore in this seminar involve basic problems of political philosophy. More particularly, we are concerned with the allocation of power between the state, the parents and the child. The historical background is provided in the article by Marks, "Detours on the Road to Maturity," (reproduced below); the basic issues are posed in the article by Mnookin and Coons, "Toward a Theory of Children's Rights," (reproduced below). We focus on one specific problem, that of minor's consent to medical procedures. There is ferment in this area. See Gillick (reproduced below). And the problems are extremely difficult. See Ree D, Re Eve and In Re B (reproduced below).

The response of the legal system to issues involving children may be affected by the introduction into Canadian law of the Charter of Rights and Freedoms (reproduced below).



## CHAPTER TWO: CHILD WELFARE LEGISLATION

### A. Introduction

Every jurisdiction in North America has legislation that authorizes the state to intervene in the life of the family by removing the child from his or her home if certain conditions are satisfied. Ontario is no exception. The Child & Family Services Act, 1984 (Ont) c.55, the legislation currently in force, is the product of much deliberation and controversy. To help you understand the present statute we have reproduced some of the background material and counterpart provisions of the predecessor statute, the Child Welfare Act.

Among the questions you should consider are the following:

(1) In what circumstances is the state justified in removing the child from his home? (2) Should this decision be based on a cost-benefit analysis - i.e., if the costs (to whom?) outweigh the benefits (to whom?), should the state refuse to intervene? (3) Is it possible to determine the costs and benefits? (See Mnookin, "Child-Custody Adjudication," reproduced herein.) (4) Is the state concerned about the present situation, or is it really concerned about the future consequences of the present situation? (5) If the latter, do we have an accurate means of predicting future human behaviour? (See Dershowitz, "On Preventive Detention," reproduced herein.)



## CHAPTER THREE: JUVENILE DELINQUENCY

### A. Introduction

Every (Western) society has had to decide how it will handle persons who are not adults when they have engaged in criminal activity. The responses have taken two basic forms: (1) The North American: on this continent, we have established specialized courts with a special process and special dispositional powers to deal with part of this group. (See the Young Offenders Act, reproduced below.) Those who are above the maximum age for juvenile court jurisdiction are subject to the ordinary process, i.e., trial in adult criminal court. (2) In some European countries, young people who would be processed in juvenile court in Canada are handled by the ordinary child welfare system.

President's Commission On Law Enforcement and Administration of Justice. Task Force Report: Juvenile Delinquency and Youth Crime (1967)

Juvenile courts are judicial tribunals that deal in special ways with young people's cases. They exist in all jurisdictions. The cases they deal with include delinquency (conduct in violation of the criminal code and also truancy, ungovernability, and certain conduct illegal only for children), neglect, and dependency. The young people they deal with are those below a designated age, usually set between 16 and 21; their authority extends until the youth reaches his majority. They differ from adult criminal courts in a number of basic respects, reflecting the philosophy that erring children should be protected and rehabilitated rather than subjected to the harshness of the criminal system. Thus they substitute procedural informality for the adversary system, emphasize investigation of the juvenile's background in deciding upon dispositions, rely heavily on the social sciences for both diagnosis and treatment, and in general are committed to rehabilitation of the juvenile as the predominant goal of the entire process.

The juvenile court has become the primary judicial agency for dealing with juvenile criminality, the single most pressing and threatening aspect of the crime problem in the United States. One in every nine children will be referred to juvenile courts for an act of delinquency before his 18th birthday. Considering boys alone, the ratio rises to one in every six.<sup>1</sup>

. . . .